IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Babu Singh Vs. State of Rajasthan

S.B.CR.REVISION PETITION NO.50/1991

against the order dt.12.2.1991 passed by Additional Sessions Judge, Bali in Cr.Revision No.27/1989.

DATE OF ORDER :: April 26, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. Deepak Menaria for Mr.Pradeep Shah, for the petitioner.
Mr. JPS Choudhary, Public Prosecutor for the State.

BY THE COURT:

This criminal revision under section 397/401 of the Code of Criminal Procedure, 1973 (for short `the Code` hereinafter) is directed against the order dt. 12.2.1991 passed by Additional Sessions Judge, Bali (for short `the revisional court` hereinafter) in criminal revision No.27/89, whereby the revisional court set aside the order dt. 24.4.1989 passed by Judicial Magistrate, Sumerpur (for short `the trial court` hereinafter) in criminal case No.174/85. By order dt. 24.4.1989, the trial court discharged the petitioner from the offence under section 420 I.P.C. However, the revisional court set aside the order of the

trial court by allowing the revision. Hence, this revision by the accused-petitioner.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the material available on record.

It appears that on 16.9.1984, complainant Hajari Singh lodged a report at Police Station, Sumerpur alleging therein that an agreement to sale, between complainant and one Jabar Singh with regard to sell his agricultural well, was made and in this regard, Jabar Singh paid a sum of Rs.22,101/- as advance to the complainant, which was subsequently returned to Jabar Singh as the agreement to sale came to be annulled because of non-fulfillment of terms and conditions. It is alleged that Jabar Singh got thumb impressions of the complainant on a stamp, which according to complainant was alleged to have been misused. From perusal of the order impugned, it nowhere appears that the stamp was ever handed over to the petitioner. Even according to the complainant, it was handed over to Jabar Singh. It also appears that a civil transaction took place between Jabar Singh and Hajari Singh regarding the sale of agricultural well for which a part payment was also made to Jabar Singh. There appears to be no specific allegation against the present

petitioner that he fraudulently or dishonestly induced the complainant to deliver any property, or to consent that such person shall retain any property. The very essential ingredients of cheating are not made out. There is no evidence that the petitioner dishonestly induced the complainant to deliver any property, or to make, alter or destroy the whole or any part of a valuable security. The trial court, on proper appreciation of the evidence available on record, came to the conclusion that there is no ground to presume that the petitioner committed the offence punishable under section 420 I.P.C. and discharged him from the said offence. In my view, the order of the trial court appears to be based on proper appreciation of evidence.

Consequently, the revision petition is allowed. Order impugned dt. 12.2.1991 passed by the revisional court is set aside and that of order dt. 24.4.1989 passed by the trial court is restored. Stay order dt. 10.9.1991 is vacated. The stay petition is disposed of.

[H.R.PANWAR],J.

m.asif/-